



**Amendment No. 1  
of  
Contract No. NC190000034  
for  
Postage Mailing System  
between  
Neopost USA, Inc.  
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to Quadient, Inc. as requested and documented by the vendor:

	From	To
<b>Vendor Name</b>	Neopost USA Inc. Dba, Neopost Inc or Neopost Texas	<b>Quadient, Inc.</b>
<b>Vendor Code</b> (for City use only)	USP7160190	<b>USP7160190</b>
<b>Vendor Federal Tax ID (FEIN)</b>	<div style="background-color: black; width: 100px; height: 1.2em;"></div>	<div style="background-color: black; width: 100px; height: 1.2em;"></div>

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

**BY THE SIGNATURE** affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

**Cindy Reyes** Digitally signed by Cindy Reyes  
Date: 2020.04.28 10:06:31 -05'00'

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Cindy Reyes  
Contract Management Specialist III  
City of Austin, Purchasing Office

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Date

**CONTRACT BETWEEN THE CITY OF AUSTIN  
("City") AND  
NEOPOST USA INC. ("Contractor") for  
IS5000 Mailings Systems  
MA 7500 NC190000034**

This Contract is between NeoPost USA Inc. ("Contractor"), having offices at 478 Wheelers Farms Road, Milford, CT 06451 and the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, (collectively referred to as the "parties") and is effective when signed by an authorized representative of the City. This Contract meets solicitation requirements by using Contractor's State of Texas TXMAS Smartbuy Contract Number: 985-L1.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 State of Texas TXMAS Smartbuy Contract Number 985-L1
- 1.1.2 This Contract
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, NeoPost USA Inc. Offer, dated 6/19/2019, including subsequent clarifications
- 1.1.5 Exhibit C, Non-Discrimination Certificate

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 State of Texas TXMAS SmartBuy Contract Number: 985-L1 including any and all supporting schedules, and product availability and pricing information as indicated in Section 1.1.1 herein.
- 1.2.2 This Contract
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 The Contractor's Offer as referenced in Section 1.1.4, including subsequent clarifications

**1.3 Quantity.** Quantity of goods or services as described in Exhibit B.

**1.4 Term of Contract.** The Contract shall be in effect for a term of sixty (60) months with zero extension options.

- 1.4.1 **Cooperative is Extended.** If the expiring cooperative agreement is extended, or if a new cooperative agreement is completed, the City will amend the Contract with the new information, only the Contractor involved will receive the Amendment for signature; Amendment copies will not be emailed to other Contractors.


**1.5 Compensation.** The Contractor shall be paid a total not-to-exceed amount of \$92,971.20 for the Contract term.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**NeoPost USA Inc.**

Kevin O'Connor  
Printed Name of Authorized Person

  
Signature

VP US Marketing  
Title:

7/12/2019  
Date:

**CITY OF AUSTIN**

Jo Gutierrez  
Printed Name of Authorized Person

  
Signature

Procurement Spec III  
Title:

7/12/19  
Date:

Exhibit A – City's Supplemental Terms and Conditions

Exhibit B – State of Texas TXMAS Smartbuy Contract 985-L1 and Quote

Exhibit C – City of Austin Non-Discrimination Certificate

## EXHIBIT A SUPPLEMENTAL TERMS

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Keith Wheelis, Phone: (512) 697-2496, Email Address: [K.Wheelis@neopost.com](mailto:K.Wheelis@neopost.com). The City's Contract Manager for the engagement shall be Marty James, Phone: (512) 974-3519, Email Address: [Marty.James@austintexas.gov](mailto:Marty.James@austintexas.gov). The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.
2. **End of Lease Purchase of Equipment.** Upon termination of the lease, the City shall have the option, but is under no obligation, to purchase the equipment at fair market value.
3. **INSURANCE:** Insurance is required for this solicitation.
  - A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
    - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
    - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
    - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
    - iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767
  - B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
    - i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
      - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
        - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
        - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
    - ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
      - (1) The policy shall contain the following provisions:
        - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
        - (b) Contractor/Subcontracted Work.
        - (c) Products/Completed Operations Liability for the duration of the warranty period.
        - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

**EXHIBIT A SUPPLEMENTAL TERMS**

(2) The policy shall also include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, nonowned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

#### 4. **INVOICES and PAYMENT:**

A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall contain a unique invoice number, the purchase order or delivery order number and the ~~master agreement number~~ if applicable, the Department's Name, ~~and the name of the point of contact for the Department. Invoices shall be itemized.~~ The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

~~Invoices shall be emailed to:~~ [BSDAPInvoices@austintexas.gov](mailto:BSDAPInvoices@austintexas.gov). The Billing address is below address:

	City of Austin
Department	Building Services
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.



**CITY OF AUSTIN  
PURCHASING OFFICE  
EXCEPTIONS**

**Solicitation Number:**

The City will presume that the Offeror is in agreement with all sections of the solicitation unless the Offeror takes specific exception as indicated below. The City, at its sole discretion, may negotiate exceptions to the sections contained in the solicitation documents or the City may deem the Offer non-responsive. The Offeror that is awarded the contract shall sign the contract with the accepted or negotiated sections.

Copies of this form may be utilized if additional pages are needed.

☐ Accepted as written.

☐ Not accepted as written. See below:

**Indicate:**

- ☐ 0300 Standard Purchase Terms & Conditions  
☒ 0400 Supplemental Purchase Provisions  
☐ 0500 Scope of Work

**Page Number**

4, Exhibit A Supplemental Terms

**Section Number**

4

**Section Description**

Insurance & Invoices and Payments

**Alternative Language:**

**Justification:**

We are unable to provide the following on invoices: master agreement number, point of contact for the department and ask that this be stricken.

Lease invoices do not include itemizations. Please strike.

Invoices shall be emailed to: BSDAPInvoices@austintexas.gov.

Please note we will be mailing the invoices to the PO box. The customer can register on MyNeopost for paperless invoicing if they wish. Please strike and state that invoices will be mailed.

July 11, 2019

Jo Gutierrez  
Procurement Specialist III  
City of Austin-Purchasing Office  
124 W. 8<sup>th</sup> Street  
Austin, TX 78701

Dear Ms. Gutierrez:

Neopost USA Inc. hereby confirms it will provide the City of Austin thirty (30) days' notice of any cancellation or termination as applicable to any insurance policies listed on the attached certificates of insurance issued by Willis of New York, Inc. on 2/1/2019, and issued by Pacific Diversified Insurance Services on 1/29/2019.

Sincerely,



Heather Laskowski  
Risk Manager

immediately stop reading this message and delete it from your system. Any unauthorized reading, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you received this message in error, please notify us immediately by return e-mail. Thank you.

<Example.pdf>

<City of Austin.docx>





06/19/2019

**RE: IS5000 Mailing Systems**  
**Contractor: Neopost USA**  
**Contract: #985-L1**

Christopher Adams  
Security Manager  
City of Austin – Building Services Department  
(512) 974-1704

Dear Mr. Adams,

Please see the below Neopost IS5000 Mailing System Commodity Codes (Search Name) from the TxSmartBuy contract.

Please note that the TxSmartBuy Quantity must equal 120 for TWO (2) IS5000 Mailings Systems ordered at 60 Months each or 120 Months total.

Commodity Code	Item Detail	Price	Quantity	f Measur	Subtotal
IS5000CSHPC,60MOLease	IS-5000 300 LPM Base   PostCard Version Mixed Mail Feeder with Wireways	\$406.23	120	MO	\$48,747.60
IS56DWMPKG,60MOLease	IS-5000/6000 Dynamic Weighing Module   60 Month Lease	\$140.32	120	MO	\$16,838.40
IS56CONVEYOR,60MOLease	IS-5000/6000 Conveyor Stacker   60 Month Lease	\$51.42	120	MO	\$6,170.40
ISWP70,60MOLease	IS Series 70lb. Weigh Platform   60 Month Lease	\$53.66	120	MO	\$6,439.20
ISELDPKG,60MOLease	New IS-490/5000/5500/6000 Remote Label Dispenser & Stand   60 Month	\$43.13	120	MO	\$5,175.60
IS-5000PromoMeterRate	IS-5000 Promo Meter Rate	\$80.00	120	MO	\$9,600.00
	Total				\$92,971.20

Please contact me via phone or e-mail with any questions.

Sincerely,  
Keith Wheelis  
Major Account Executive  
(832) 335-0696  
K.Wheelis@Neopost.com



(http://www.comptroller.texas.gov/)

Texas Comptroller of Public  
Accounts  
Glenn Hegar

EXHIBIT B



(http://www.txsmartbuy.com)

Sign In

0 items

[Contracts](#)[SPD Applications](#)[Help \(/help/\)](#)

## Contract Details: # 985-L1

Search for items in this contract (/ex\_search/false/contract\_number/985~L1)

<b>Number</b>	985-L1
<b>Description</b>	Mailroom Equipment and Supplies
<b>Category</b>	TxSmartBuy
<b>Type</b>	Term
<b>Start Date</b>	9/1/2017
<b>End Date</b>	5/14/2020
<b>Purchase Category Code(Agencies Only)</b>	PCC A  Legal Cite: State agency mail operations are governed by state statute and administrative rules. Tex. Gov't Code Ann., Ch. 2176, Vernon 2000 & Supp. (2006); 1 Tex Administrative Code Sec. 117.31 (2006); See also Tex. Gov't Code Ann. Sec. 2113.103; General Appropriations Act, S.B. 1, 79th Leg., Art. IX, Sec. 6.15 (2005).
<b>Optional Renewal Terms</b>	May 15, 2020, through May 14, 2021 May 15, 2021, through May 14, 2022
<b>Purchase Orders</b>	(https://comptroller.texas.gov/purchasing/forms/)Only purchase orders issued through TxSmartBuy are eligible for contract pricing. The Contractor will not ship any products or provide related services until receipt of a Purchase Order generated by the TxSmartBuy system.  State agency special instructions for mail equipment installed within Travis County: All state agencies located in Travis County are required to consult with CPA prior to purchasing, upgrading, or selling mail equipment per Tex. Gov't Code Ann. 2176.101 To expedite your purchase or upgrade mail equipment, please answer the questions on the General Mail Equipment Procurement Questionnaire (https://comptroller.texas.gov/purchasing/publications/)(DOC). Return the completed questionnaire via email to ruben.gonzales@cpa.texas.gov (mailto:ruben.gonzales@cpa.texas.gov) at CPA Mail Operations.
<b>NIGP Code(s)</b>	600-08 600-63 600-67 600-68 600-71 600-77 600-80 600-83 780-78 924-05 924-40 985-54
<b>CPA Contract Management</b>	Questions regarding contract management issues, price changes, amendments or other post-award concerns should be directed to:  SPD Contract Management Office (SCMO) Texas Comptroller of Public Accounts (CPA) Phone: (512) 512) 463-3034 option 3 Email: spd.cmo@cpa.texas.gov (mailto:spd.cmo@cpa.texas.gov)

<b>Contract Specifics/Notes</b>	<p>Pitney Bowes Agreement #: ADSP016-169897 EXHIBIT B</p> <p>(<a href="https://www.naspovaluepoint.org/portfolios/portfolio-contractor/541/">https://www.naspovaluepoint.org/portfolios/portfolio-contractor/541/</a>)Base Contract Information (<a href="https://www.naspovaluepoint.org/portfolio/mailroom-equipment/pitney-bowes/">https://www.naspovaluepoint.org/portfolio/mailroom-equipment/pitney-bowes/</a>)</p> <p>Neopost Agreement #: ADSP016-169901</p> <p>Base Contract Information (<a href="https://www.naspovaluepoint.org/portfolio/mailroom-equipment/neopost/">https://www.naspovaluepoint.org/portfolio/mailroom-equipment/neopost/</a>) (<a href="https://www.naspovaluepoint.org/portfolios/portfolio-contractor/538/">https://www.naspovaluepoint.org/portfolios/portfolio-contractor/538/</a>)</p>
<b>Delivery Delays by Contractor</b>	<p>If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised at all times of status of order.</p> <p>Default in promised Delivery Days After Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes the Customer to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.</p> <p>Failure to pay a damage assessment is cause for contract cancellation and/or debarment or removal of the contractor, as applicable, from the State's Centralized Master Bidders List (CMBL).</p>
<b>Compliant Products by Contractor</b>	<p>Delivery does not occur until the Contractor delivers products, materials or services in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Providing products, materials or services which do not meet all specification requirements does not constitute delivery.</p> <p>Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.</p>
<b>Purchase Order Cancellation</b>	<p>The Customer may request that a Contractor cancel a specific line item or an entire purchase order. There shall be no fees charged for cancellation of an item and/or order prior to shipment by the Contractor. The cancellation must be processed through the TxSmartBuy system.</p>
<b>Restocking Fee for Returned Products</b>	<p>The Customer may request that a Contractor accept return of products already delivered. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%.</p>
<b>Substitutions</b>	<p>During the Contract term, the Contractor shall not substitute a product or brand unless the Contractor has obtained prior written approval from the CPA Contract Manager in coordination with the Customer. The Contractor must have written confirmation from the CPA Contract Manager of the substitution before making delivery.</p>
<b>Contractor Performance</b>	<p>The Statewide Procurement Division Contract Management Office (SCMO), a division of the Comptroller of Public Accounts (CPA), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agency customers shall report vendor performance on purchases of \$25,000 or more from contracts administered by CPA, or any other purchase of \$25,000 or more made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.</p> <p>Vendor Performance shall be reported through the CPA VENDOR PERFORMANCE TRACKING SYSTEM. (<a href="https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/">https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/</a>)</p> <p>The purpose of the Vendor Performance Tracking System is to:</p> <ul style="list-style-type: none"> <li>• Identify vendors that have exceptional performance</li> <li>• Aid purchasers in making a best value determination based on vendor past performance</li> <li>• Protect the state from vendors with unethical business practices</li> <li>• Provide performance scores in four measurable categories for the CMBL vendors</li> <li>• Track vendor performance for delegated and exempt purchases</li> </ul>

## Contractors Information

**VID:** 1942388825

**Contractor:** Neopost USA, Inc.

**Contact Name:** Jacqueline Palmer

**Email:** [j.palmer@neopost.com](mailto:j.palmer@neopost.com)

**Phone:** (972) 277-6723

**Address:** 478 Wheelers Farms Road Milford CT 6461

**VID:** 10604950500**EXHIBIT B****Contractor:** Pitney Bowes Inc.**Contact Name:** Hope Lax**Email:** [Hope.Lax@pb.com](mailto:Hope.Lax@pb.com)**Phone:** (877) 213-7292 x 5249**Alternate Contact Name:** Bill Walter**Alternate Email:** [Bill.Walter@pb.com](mailto:Bill.Walter@pb.com)**Alternate Phone:** (480) 206-2984**Address:** 20658 Stone Oak Parkway Ste 104 San Antonio TX 78258

Texas Comptroller of Public  
Accounts  
**Glenn Hegar**

- Home  
(<http://comptroller.texas.gov>)
- Contact Us  
(<http://comptroller.texas.gov/about/contact/>)

**POLICIES**

- Privacy and Security Policy  
(<https://comptroller.texas.gov/about/policies/privacy.php>)
- Accessibility Policy  
(<https://comptroller.texas.gov/about/policies/accessibility.php>)
- Link Policy  
(<https://comptroller.texas.gov/about/policies/links.php>)
- Texas.gov (<http://texas.gov>)
- Search from the Texas State Library  
(<https://www.tsl.texas.gov/trail/index.html>)
- Texas Homeland Security  
(<http://www.dhs.gov/geography/texas>)
- Texas Veterans Portal  
(<https://veterans.portal.texas.gov/>)
- Public Information Act  
(<https://comptroller.texas.gov/about/policies/public-information-act.php>)
- Texas Secretary of State  
(<http://www.sos.state.tx.us/>)
- HB855 Browser Statement

**OTHER STATE SITES**

- [texas.gov](https://www.texas.gov/)  
(<https://www.texas.gov/>)
- Texas Records and Information Locator (TRAIL)  
(<http://www.tsl.state.tx.us/trail/>)
- State Link Policy  
(<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/State%20Website%20Linking%20and%20Privacy>)
- Texas Veterans Portal  
(<http://veterans.portal.texas.gov>)

[Portfolios](#) > [Mailroom Equipment, Supplies and Maintenance \(5/15/17 - 5/14/22\)](#) > Neopost USA Inc

## Neopost USA Inc



**Expiration**  
05/14/2020

**Inception**  
05/15/2017

[Download Model PA](#)

### Contact Information

Name: Larry Waters  
 Phone: [\(281\) 216-4596](tel:(281)216-4596)  
 Email: [l.waters@neopost.com](mailto:l.waters@neopost.com)  
 Website: [www.neopostinc.com](http://www.neopostinc.com)

### Description

**ADSP016-169901**

### Documents

Master Agreement  
 Pricing Catalog - February 2019  
 Neopost PA  
 NASPO Cover Letter Neopost.pdf  
 NASPO Neopost Maintenance  
 Terms and Conditions  
 Neopost.pdf  
 Neopost Response to Terms and  
 Conditions.pdf  
 Signed Bid Solicitation Page  
 Neopost.pdf  
 Section 4.0 Master Agreement  
 Statement of Compliance  
 Neopost.pdf  
 Award Letter - Neopost.pdf  
 Attachment A - Capacity Neopost  
 USA (1).pdf  
 Attachment A - Circular Economy  
 Neopost Q7.1 (1).pdf  
 Attachment A - ISO 9001  
 Certification Neopost Q7.2.1  
 (2).pdf  
 Attachment A - ISO 14001  
 Certification Neopost Q7.2.1 (1).pdf

### State Participating Addenda

State of Alaska  
 State of Arizona  
 State of Arkansas  
 State of California  
 State of Colorado  
 State of Connecticut  
 State of Delaware  
 State of Georgia  
 State of Hawaii  
 State of Idaho  
 State of Illinois  
 State of Iowa  
 State of Kansas  
 State of Kentucky  
 State of Maine  
 State of Maryland  
 State of Michigan  
 State of Minnesota  
 State of Missouri  
 State of Montana  
 State of Nebraska  
 State of Nevada  
 State of New Hampshire  
 State of New Mexico  
 State of North Dakota  
 State of Ohio  
 State of Oklahoma  
 State of Oregon  
 State of South Carolina  
 State of South Dakota  
 State of Tennessee  
 State of Texas  
 State of Utah

Attachment A - Management Organizational Structure Neopost Q3.3.1.pdf  
 Attachment A - Neopost USA Corporate Presentation Neopost Q3.1.pdf  
 Attachment A - Neopost USA Equipment Take Back Plan Neopost Q7.5.pdf  
 Attachment A - Service Escalation Authorized Dealers Neopost Q6.6.pdf  
 Attachment A - Special Issue Resolution NASPO Neopost Q6.1.pdf  
 Attachment B - Key Personnel Neopost Q3.4.1 of Attachment A.pdf  
 Attachment C - rev3 Neopost.xls  
 Attachment D - HASLER Authorized Dealers Partners Sales and Service Providers.pdf  
 Attachment D - NEOPOST Authorized Dealers Partners Sales and Service Providers.pdf  
 Attachment F - Designation of Confidential Trade-Secret and Proprietary Information Neopost.pdf  
 Attachment G - Neopost References Attachment A Q3.6.2.pdf  
 BAFO RFP Attachment C1 Neopost-1.xls  
 RFP Attachment\_C1\_Neopost.xls  
 Purchase Terms and Conditions Neopost.pdf  
 Gov Lease Terms and Conditions Neopost.pdf  
 Meter Rental Terms and Conditions Neopost.pdf  
 Software Subscriptions License Pricing Neopost.xlsx  
 Attachment E - Offer and Acceptance Neopost BAFO RFP Attachment C rev3 Neopost-1.xls  
 Amendment 2 Pricing Update Approval  
 Amendment 4 - Contract Renewal  
 Neopost Channel Partners  
 Exhibit E - User Handbook

State of Vermont  
 State of Virginia  
 State of Washington  
 State of Wisconsin  
 State of Wyoming

*Statewide Participating Addenda generally applies to all eligible entities within that state. Please review the Participating Addenda for eligibility details. For local government Participating Addendums please contact the E&O team at [info@naspovaluepoint.org](mailto:info@naspovaluepoint.org).*

Contact NASPO ValuePoint to  
learn how you can execute a  
Participating Addendum.

FOLLOW CONTRACTOR

*DISCLAIMER: The documents on the NASPO ValuePoint website are for informational/ convenience purposes only. Official documents are maintained by the lead state (or participating entity in the case of participating addenda). In the event of any conflict between the documents on this site and those maintained by the lead state or participating entity, the official documents maintained by the lead state or participating entity govern.*

*Please note that some documents may be absent or incorrect. Please send all feedback and suggestions for improvement to our website team at [webmaster@NASPOValuePoint.org](mailto:webmaster@NASPOValuePoint.org)*

*Thank you.*

**STATE OF TEXAS  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
COOPERATIVE CONTRACT PARTICIPATION AGREEMENT NO: 985L1-1970**

**THIS CONTRACT** is entered into by and between the Texas Comptroller of Public Accounts (CPA), an agency of the State of Texas, through its Statewide Procurement Division located at 1711 San Jacinto Blvd., Austin, Texas 78774 and Neopost USA Inc. ("Contractor") with its principal place of business located at 478 Wheelers Farms Rd. Milford, CT 06461.

This Contract is effective as of the date of signature by CPA after having first been signed by Contractor.

### **1. BACKGROUND**

Contractor has entered into a contract with a governmental cooperative purchasing entity (the "Master Agreement"). The Master Agreement is ADSP016-169901 between Contractor and the State of Arizona for Mailroom Equipment, Supplies & Maintenance. CPA has determined that entering into the Master Agreement would be in the best interest of the state. "Customers" includes any entity authorized by Texas law to purchase under a CPA contract. This Cooperative Contract Participation Agreement (the "Contract") supplements and supersedes the Master Agreement. It establishes terms and conditions under which Customers may acquire Contractor's goods or services, but does not obligate any Customer to do so.

### **2. CONTRACT DOCUMENTATION**

- (a) This Contract incorporates the Master Agreement (see section entitled "Entire Agreement" below). To the extent there is a conflict between this Contract and the Master Agreement, this Contract controls.
- (b) This Contract incorporates the Participating Addendum that is attached to it and labeled "Attachment A." To the extent there is a conflict between this Contract and the Participating Addendum, this Contract controls.
- (c) The Master Agreement consists of all documents and materials incorporated in that agreement with the governmental entity that awarded the Master Agreement. Those documents include, but are not limited to, the governmental entity's competitively procured solicitation, Contractor's response to that solicitation, any resulting contract and all amendments thereto, and any authorized price lists.
- (d) Additionally, all representations, clarifications, and certifications submitted by Contractor as a part of the Master Agreement contracting process are also included.
- (e) Prices reflected on the Master Agreement are maximum prices. A Customer may negotiate a lower price for goods and services than that listed on the Master Agreement.

### **3. CERTIFICATION OF ACCURACY**

Contractor hereby certifies that all copies of the Master Agreement documents that were submitted to CPA are true, correct, current, and complete. Contractor further represents and warrants that all future Master Agreement revisions submitted to revise this Contract will also be true, correct, current, and complete.



#### **4. REPRESENTATIONS**

Contractor warrants that all certifications and representations made as a basis for obtaining or as a part of the Master Agreement were and still are true and accurate. Contractor further agrees that such representations are a basis for CPA entering into this Contract and that such representation and certifications inure to the benefit of the State of Texas, CPA, and all Customers under this Contract.

#### **5. FUTURE NOTICE**

- (a) Contractor acknowledges that any continuing obligation to notify the governmental entity that awarded Contractor's Master Agreement of changes affecting the Master Agreement (including, by way of example only, notices required under any price change provisions of the Master Agreement) imposes a corresponding continuing obligation to notify CPA under this Contract.
- (b) Contractor agrees to notify CPA within 30 calendar days of all changes in the status of or amendments to the Master Agreement.
- (c) Contractor shall promptly notify CPA of any modifications to the Master Agreement. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.

#### **6. PARTIES TO THIS CONTRACT**

- (a) For purposes of this Contract, all rights and obligations of Contractor and the governmental entity that awarded Contractor's Master Agreement will be rights and obligations of Contractor and the State of Texas, CPA, and Customers, except to the extent that such would create an absurdity, are modified by this Contract, or would violate state or federal law. CPA is the contracting agency that is a party to this Contract, but may, as a state agency, also be a Customer under this Contract.
- (b) Unless expressly stated otherwise or unless the context clearly indicates otherwise, all Customers of this Contract will have the same rights and remedies of the State of Texas and CPA under this Contract including, but not limited to, the provisions regarding indemnification. Any order placed by a local government under this Contract will be between Contractor and the local government. Contractor will look solely to the local government for performance, including but not limited to, payment, and will hold the State of Texas harmless with regard to such orders. The State of Texas, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should Contractor fail to honor its obligations under an order from a local government.
- (c) In performing this Contract, Contractor and Contractor's employees, representatives, agents and any subcontractors are not employees of the State of Texas, CPA, or Customers. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State of Texas, CPA, and Customers are in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.

#### **7. COOPERATIVE CONTRACT PROGRAM REQUIREMENTS**

In addition to all other provisions in this Contract that constitute changes or modifications to the Master Agreement, Contractor agrees to the following provisions, notwithstanding anything to the contrary contained

in the Master Agreement:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in Contractor's offer letter to the State.
- (c) Payments and invoicing will be in accordance with the terms discussed under the provisions in this Contract entitled "PAYMENT; TRAVEL EXPENSES" and "INVOICE REQUIREMENTS."
- (d) All shipping of equipment under warranty for repairs will be at Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Time.
- (f) Neither the State of Texas, nor CPA, nor Customers will purchase goods or services for overseas delivery or provide Contractor with overseas support.
- (g) Contractor may not sell and Customers may not purchase goods or services that are not included in this Contract. Therefore, to the extent the Master Agreement contains terms that are not included in this Contract (such as blanket purchase agreements and contractor team arrangements), those terms are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a Customer may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the Master Agreement to the extent permitted by applicable laws, rules, and regulations. The purchase of incidental items will be treated as an open market purchase and clearly labeled on the purchase order as open market items. These incidental items may not exceed \$5,000. If incidental goods or services exceed \$5,000, the purchase order may be void.
- (h) Contractor may only sell professional services to Customers as defined and mandated by Chapter 2254, Subchapter A, of the Texas Government Code. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (i) Contractor may not sell to state agency Customers under this Contract any consulting services available on Contractor's Master Agreement that are subject to Chapter 2254, Subchapter B of the Texas Government Code. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (j) Contractor may not sell to Customers under this Contract any technology commodity items (defined under Section 2157.068 Texas Government Code) that are available on Contractor's Master Agreement. This includes commercial software, hardware, or technology services that are generally available to businesses or the public. This Contract specifically excludes any technology commodity item listed in Contractor's Master Agreement or Contractor's catalog or proposal. CPA will consider Contractor's violation of this clause a material breach of the Contract and CPA may immediately terminate this Contract or pursue any other available contract remedy.
- (k) Contractor must submit a TxSmartBuy catalog to CPA with the exact same list of goods and services that the Master Agreement permits Contractor to sell for uploading into the TxSmartBuy online ordering system. The TxSmartBuy catalog must reflect the goods and services listed on the Master Agreement website. If a good or service is not visible online, then CPA will not list the good or service

on the TxSmartBuy online ordering system.

## 8. TXSMARTBUY

- (a) **Online ordering.** CPA operates the TxSmartBuy online ordering system to allow Customers to order from the Contract online. Customers may search for available goods and services, compare prices, and place orders through TxSmartBuy. Customers will exclusively access the goods or services available under Contractor's contract through TxSmartBuy.
- (b) **Pricing and related information not confidential or proprietary.** The operation of TxSmartBuy requires CPA to publish all pricing information and other related information online. Consequently, by signing this agreement, Contractor agrees that the pricing (and other related information) submitted by Contractor is not confidential or proprietary. By signing this Contract, Contractor consents to the publication of Contractor's pricing and related information on TxSmartBuy.
- (c) **TxSmartBuy administrative fee.** To cover the costs of operating TxSmartBuy, CPA will charge Contractor a 1.5% TxSmartBuy administrative fee. If Contractor wishes to recover this fee, CPA authorizes Contractor to charge up to 1.5228% additionally for goods and services. In CPA's review and evaluation of Contractor's pricing, CPA assumes that Contractor has already considered and factored in no more than a 1.5228% maximum recoupment of the TxSmartBuy administrative fee.
  - (i) Contractor shall remit the 1.5% TxSmartBuy administrative fee on a monthly basis. The TxSmartBuy administrative fee is based on the amount of sales (based on the good's or service's delivery date) under this Contract for the previous month and is due upon receipt of the invoice that CPA will e-mail to Contractor the following month.
  - (ii) CPA will bill Contractor for this fee based on all sales under the Contract.
  - (iii) The TxSmartBuy administrative fee remittance should be identified as "TxSmartBuy Admin Fee" and made payable to CPA. The remittance address is: Texas Comptroller of Public Accounts, Attn: TxSmartBuy Administrative Fee, P.O. Box 13106, Austin, TX 78711-3106.
  - (iv) The TxSmartBuy administrative fee is subject to change at the sole discretion of CPA. CPA will provide Contractor with written notice of any increase to the TxSmartBuy administrative fee.
- (d) **Warrant hold for non-payment of fees.** Texas Government Code § 403.055 prohibits CPA from making payments to anyone indebted to the State of Texas. Payments to Contractor may be held and applied to the Contractor's debt in accordance with Texas Government Code § 403.0551.

## 9. DEALERS

- (a) Upon CPA approval, Contractor may designate one or more dealers to provide goods or services under this Contract on behalf of Contractor. To designate a dealer, Contractor must provide a Letter of Authorization. Contractor shall provide a separate Letter of Authorization for each designated dealer.
- (b) The Letter of Authorization must be submitted on Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Statewide Procurement Division Director at the address set forth in Contract section entitled "Notices." The Letter of Authorization must include a Letter of Acceptance from the dealer and all supporting documentation. By submitting a Letter of Authorization, Contractor represents and warrants the following:

- (1) The dealer has been given a copy of this Contract (and all incorporated documents), a duly authorized representative of the dealer has agreed in writing to be bound by the terms and conditions of this Contract and the Master Agreement as modified by this Contract, and that such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor.
  - (2) Contractor agrees to remain liable under this Contract for any failure of the dealer to perform and for any breach of the dealer under this Contract. Any items sold by an authorized Dealer is subject to the fees set forth in Section 8 above. CPA will look solely to Contractor for payment of all applicable fees and Contractor will be responsible for payment of all applicable fees regardless of whether a dealer provided the goods or services to Customer.
  - (3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and Contractor will look solely to the dealer for any payments due Contractor once the State of Texas, CPA, or a Customer has paid the dealer. Under this agreement all payments due the Contractor shall be paid directly to the contractor.
  - (4) To the extent that there is any liability to the State of Texas, CPA, or any Customer arising from doing business with a dealer that has not signed the Letter of Acceptance required under this section with Contractor, Contractor will fully and unconditionally indemnify the State of Texas, CPA, and Customers for such liability.
  - (5) Contractor's Letter of Authorization shall remain effective until CPA receives written notification from Contractor, signed by an authorized representative of Contractor, that the authorization to a dealer is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer's official letterhead, signed by an authorized representative of the dealer, and addressed to the attention of Contractor. In the Letter of Acceptance, the dealer must represent and warrant that it has been given a copy of this Contract and the Master Agreement, it agrees to be bound by the terms and conditions of this Contract and the Master Agreement, as both may be amended from time to time, and such agreement specifically provides that it is for the benefit of the State of Texas, CPA, and Customers, as well as Contractor. The Letter of Acceptance must also include the following information:
- (1) the dealer's name and address;
  - (2) the dealer's point of contact name, telephone number, fax number, and e-mail address;
  - (3) the dealer's payment address;
  - (4) the dealer's purchase order e-mail address;
  - (5) the dealer's Federal Employer's Identification Number (FEIN); and
  - (6) the dealer's HUB Certificate, if the dealer is a Texas HUB.
- (d) Prior to CPA's approval of Contractor's designated dealer, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the submission of documentation is incomplete (*i.e.*, does not include all required documentation), CPA reserves the right to reject the Letter of Authorization and require re-submission

by Contractor of the Letter of Authorization and all required documentation. Even if a submission is complete, CPA reserves the right to reject Contractor's designation of a dealer to provide services under this Contract on behalf of Contractor. Approval is at CPA's sole discretion

## **10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)**

In accordance with Chapter 2161 of the Texas Government Code and 34 Texas Administrative Code (TAC) §§20.281 *et seq.*, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services (including professional and consulting services), and commodities contracts.

Contractors are urged to utilize HUBs as defined in 2161.001 of the Texas Government Code Section or small businesses as defined in Section 2155.505(a) Texas Government Code Section to sell or provide services under the Master Agreement. A Contractor's failure to make a good faith effort to use HUBs and small businesses under the Master Agreement may result in exclusion of Contractor from participation in state contracts. A list of Certified Texas HUB Vendors can be accessed on CPA's website.

## **11. LIMITATION ON AUTHORITY; LIMITATION OF LIABILITY**

Contractor shall have no authority to act for or on behalf of the State of Texas, CPA, or Customers except as expressly provided for in this Contract; no other authority, power, use, or joint enterprise is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas, CPA, or Customers.

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL THE STATE OF TEXAS, CPA, OR CUSTOMERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. PAYMENT; TRAVEL EXPENSES**

- (a) Payment shall be made in accordance with Chapter 2251 of the Texas Government Code.
- (b) Except as provided for in Section 2251.021(b) of the Texas Government Code, payment by a state agency or local government is due within thirty (30) calendar days after the later of:
  - (1) the date the state agency or local government receives the goods under this Contract;
  - (2) the date the state agency or local government receives a proper invoice (see Paragraph below entitled "INVOICE REQUIREMENTS") for the goods or services; or
  - (3) the date the performance of the service under the contract is completed
- (c) Except as provided for in Section 2251.021(b) of the Texas Government Code, a payment will begin to accrue interest at a rate by CPA pursuant to the statute on the 31<sup>st</sup> day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the state agency or local government mails (postmark) or electronically transmits the payment.

- (d) Any travel or per diem required by Contractor to perform its obligations under this Contract and the Master Agreement will be at Contractor's expense. All travel and per diem that a Customer requests in addition to what this Contract or the Master Agreement requires Contractor to provide at Contractor's expense are subject to, and shall not exceed, the reimbursement limitations applicable to Texas state employees in conducting official state business as prescribed by applicable law, rules, and regulations including, but not limited to, Chapter 660 of the Texas Government Code, the General Appropriations Act and rules adopted by the Comptroller.

### **13. INVOICE REQUIREMENTS**

- (a) In order to receive payment, Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:

- (1) Name and address of Contractor as designated in this Contract.
- (2) Contractor's Federal Employer's ID Number (FEIN) as designated in this Contract.
- (3) Contractor's invoice remittance address as designated in this Contract.
- (4) The purchase order number authorizing the delivery of products or services.

A description of what Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services

- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.
- (c) If an invoice does not meet this section's requirements or if Contractor fails to give proper notice of a price increase (see Paragraph below entitled "NOTIFICATION OF PRICE INCREASE"), CPA will send Contractor written notice with the improper invoice to the address designated for receipt of purchase orders. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.
- (d) In submitting an invoice to a Customer, Contractor certifies: that the invoice has been carefully reviewed for detailed description of the services performed or goods delivered; that the services have been performed or goods delivered in compliance with this Contract and the Master Agreement; that the amount of the invoice and all previous invoices together do not exceed the contractual cap of this Contract, the Master Agreement, or Contractor's negotiated fees; that the charges and expenses shown on the invoices are reasonable and necessary; and that all appropriate and required supporting documentation is attached. Customer may, in its sole discretion, require additional documentation to support payment and Contractor shall respond to any such requests within five (5) calendar days of receipt. Customer reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. Customer also reserves the right to refuse payments for invoices that exceed the rates specified in this Contract or the Master Agreement or Contractor's negotiated fees.

### **14. AUDIT REQUIREMENTS**

Pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state

directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. This Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.154 of the Texas Government Code. **Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any dealer agreement or subcontract.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by state or federal law or regulation. Those additional requirements will be included on the purchase order for that particular order.

## **15. NOTIFICATION OF PRICE INCREASES**

For price increases authorized under this Contract, notification of such must be given to CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). Contractor must give these notices no later than 30 calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

## **16. NON-APPROPRIATION OF FUNDS**

All obligations of CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to this Contract. Contractor acknowledges that the ability of CPA and the Customers to make payments under this Contract is contingent upon the continued availability of funds. Contractor further acknowledges that funds may not be specifically appropriated for the Contract and CPA's or Customers' continual ability to make payments under this Contract is contingent upon the funding levels appropriated for each particular appropriation period. CPA and the Customers will use all reasonable efforts to ensure that such funds are available. Contractor agrees that if future levels of funding for CPA or a Customer are not sufficient to continue operations without any operational reductions, CPA, in its discretion, may terminate this Contract, either in whole or in part, or the Customer, in its discretion, may terminate a pending order under this Contract, either in whole or in part. In the event of such termination, neither CPA nor Customers will be considered to be in default or breach under this Contract, nor shall CPA or Customers be liable for any further payments ordinarily due under this Contract, nor shall CPA or Customers be liable for any damages or any other amounts which are caused by or associated with such termination. CPA and Customers shall make best efforts to provide reasonable written advance notice to Contractor of any such Contract or order termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or this Contract, if this Contract is being terminated. CPA or the Customer, as applicable, shall be liable for payments limited only to the portion of work CPA or the Customer authorized in writing and which Contractor has completed, delivered to CPA or Customer, and which has been accepted by CPA or Customer. All such work shall have been completed, per Contract requirements of this Contract and the Master Agreement, prior to the effective date of termination.

## **17. PUBLIC INFORMATION**

The CPA is a governmental body subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code, as are other potential Customers of this Contract. The Master Agreement and other information submitted to the CPA by Contractor are subject to release as public information by the CPA and by any Customer that is also subject to the PIA. The Master Agreement and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Contractor to include proprietary or otherwise confidential information in its submitted information, Contractor must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire submission is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire submission subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the submitted information that are considered by Contractor to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by Contractor as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA and Contractor shall thereby be irrevocably deemed to have waived, and Contractor agrees to fully indemnify the State of Texas, CPA, and any Customer subject to the PIA from, any claim of infringement by CPA and any Customer subject to the PIA regarding the intellectual property rights of Contractor or any third party for any materials appearing in the submitted information.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Section 2252.907(d) of the Texas Government Code) pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, CPA, or Customers: portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

## **18. CONFIDENTIALITY AND SECURITY**

Any information Contractor receives, compiles, or creates as a result of this Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to Customers in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

## **19. RECORDS RETENTION**

Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in this Contract. Contractor shall retain all such records for a period of seven (7) years after the expiration of this Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall grant access to all books, records and documents pertinent to this Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under this Contract.

## **20. INSURANCE AND OTHER SECURITY**

Contractor represents and warrants that it will obtain and maintain for the term of this Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do



the same. Such insurance shall comply with all statutory requirements of all states in which Contractor performs under this Contract and must cover any cargo being delivered to Customers.

Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request of a Customer or the CPA.

## **21. LIABILITY FOR AND PAYMENT OF TAXES**

CPA and certain Customers are exempt from certain taxes. Customers will furnish proof of tax exempt status to Contractor upon request. Contractor shall pay all taxes resulting from this Contract and the Master Agreement including any federal, state, or local income, sales, excise, or property taxes. The State of Texas, CPA, and Customers does not have tax liability under this Contract and will not reimburse Contractor for the payment of such taxes incurred by Contractor in acquiring any goods or services as a part of any work called for in this Contract or the Master Agreement. Contractor's invoice may not include any amount for such taxes.

## **22. TERM AND TERMINATION**

This Contract shall become effective on the date countersigned by the appropriate CPA official. Unless otherwise sooner terminated as provided in this Contract, this Contract will terminate no later than five years from the date of execution. If the Master Agreement expires less than five years from the date of Contract execution, this Contract will terminate upon the later to occur of (1) the expiration of the Master Agreement or (2) the physical completion of the last outstanding task or delivery of the final order placed under, and prior to the expiration of, the Master Agreement through this Contract. **The termination or expiration of this Agreement shall in no way relieve either party from its obligations accrued hereunder prior to such termination or expiration or affect the limitation of liability including, but not limited to, any obligations pursuant to any Product Leases or Postage Meter Rental Agreements that were entered prior to the date of any such termination or expiration.**

### **(a) Termination for Convenience of the State of Texas**

The CPA reserves the right to terminate this Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination.

### **(b) Termination for Cause**

If Contractor fails to provide the goods or services contracted for according to the provisions of this Contract or the Master Agreement, or fails to comply with any of the terms or conditions of this Contract or the Master Agreement, the CPA may, upon written notice of default to Contractor, terminate all or any part of this Contract. For performance deficiencies that the CPA determines are curable, CPA shall give Contractor notice of the deficiency and 14 days to cure prior to termination. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under this Contract and the Master Agreement.

The CPA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of this Contract or the Master Agreement, or to recover damages for the breach of any agreement being derived from this Contract or the Master Agreement. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the CPA notifies Contractor in writing prior to the exercise of such remedy. Contractor shall remain liable for all covenants and indemnities under this

Contract and the Master Agreement. Contractor shall be liable for all costs and expenses, including court costs, incurred by the CPA with respect to the enforcement of any of the remedies listed herein.

**(c) Change in Federal or State Requirements**

If federal or state laws, rules, regulations, or requirements applicable to this Contract are amended, performance under this Contract will be subject to the laws, rules, regulations, or requirements applicable at the time of performance under this Contract. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the CPA or Contractor cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of this Contract, the Parties shall be discharged from any further obligations under this Contract.

**(d) Termination for Non-Appropriation of Funds**

CPA may terminate the Contract immediately for non-appropriation of funds as further detailed in the Contract section entitled, "Non-Appropriation of Funds."

**(e) Property Rights upon Termination**

For purposes of this Contract, the term "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services to be provided by Contractor for this Contract; provided that such property was developed in accordance with written specifications provided by a Customer and is neither (i) an enhancement to a product distributed by Neopost, nor (ii) used to configure or connect products distributed by Neopost. In the event that this Contract or the Master Agreement is terminated for any reason, or upon the expiration of either this Contract or the Master Agreement, Customers shall retain ownership of all associated Work Product and documentation obtained from Contractor under the Master Agreement through this Contract. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to Customers, Contractor shall grant to Customers a non-exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display the Work Product, including such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

**(f) No Liability Upon Termination**

If this Contract is terminated for any reason, the State of Texas, CPA, and Customers shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. In the event of termination of this Contract, the sole and maximum obligation of the State of Texas, CPA, and Customers shall be to authorize payment to Contractor for previously authorized goods or services performed in accordance with all requirements of this Contract and the Master Agreement, up to the termination date.

**(g) Survival of Terms**

Termination of this Contract or the Master Agreement for any reason shall not release either party from any liability or obligation set forth in this Contract or the Master Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

**(h) Misrepresentation of goods and services available under Master Agreement**

If Contractor sells goods or services through this Contract that are not available on the Master Agreement, excluding permitted incidental goods and services as further defined in this Contract, CPA may immediately terminate the Contract.

**23. FORCE MAJEURE**

CPA, any Customer, and Contractor will not be responsible for delays in performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of CPA, Customer, or Contractor. In the event of an occurrence under this Section, the CPA, Customer, or Contractor (Parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Party will immediately notify the other Party(ies) by telephone (to be confirmed in writing within five calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**24. VENDOR PERFORMANCE**

- (a) CPA may use vendor performance to analyze whether a vendor is eligible for a contract. CPA may conduct reference checks with other entities regarding past performance both prior to awarding a contract to Contractor and during the entire term of a contract.
- (b) CPA may consider the following conditions when awarding a contract or when considering continued contract existence:
  - (i) A score of less than a C or Legacy Unsatisfactory in the Vendor Performance Tracking System (VPTS);
  - (ii) Whether the vendor or Contractor is under a Corrective Action Plan with CPA or another state agency;
  - (iii) Having repeated negative vendor performance reports;
  - (iv) Having a record of repeated non-responsiveness to vendor performance issues; and
  - (v) Having purchase orders that have been cancelled in the previous 12 months for non-performance (such as late delivery or not meeting specifications).
- (c) In addition to evaluating performance through VPTS as authorized by 34 Texas Administrative Code § 20.217, CPA may examine other sources of Contractor performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Contractor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, CPA may initiate these examinations of Contractor's performance based upon media reports. Any investigations are at CPA's sole discretion, and any negative findings, as determined by CPA, may result in not awarding a contract or enforcing remedies against Contractor, including contract termination. Information pertaining to VPTS is located on CPA's website at: [http://www.window.texas.gov/procurement/prog/vendor\\_performance/](http://www.window.texas.gov/procurement/prog/vendor_performance/).

- (d) Additionally, in accordance with Section 2155.089 of the Texas Government Code, CPA or state agency Customers will review successful Contractor's performance under a contract resulting from this solicitation after the Contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on VPTS as noted in Section 2262.055 of the Texas Government Code.

## **25. DELIVERIES**

All deliveries for orders placed under this Contract shall be F.O.B. Destination.

If delivery delay is foreseen, Contractor shall give written notice to the Customer. Customer has the right to extend delivery or service date if reasons appear valid. Contractor shall keep Customer advised at all times of the status of the order. Default in promised delivery (without accepted reasons), service date, or failure to meet specifications, authorizes the Customer to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to Contractor.

## **26. EQUAL EMPLOYMENT OPPORTUNITY**

Contractor shall comply with all federal and state laws regarding equal employment opportunity.

## **27. DRUG-FREE WORKPLACE ACT**

Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act.

## **28. AMERICANS WITH DISABILITIES ACT**

Contractor represents and warrants that it will comply with the requirements of the Americans with Disabilities Act (ADA).

## **29. CIVIL RIGHTS**

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

## **30. IMMIGRATION**

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

## **31. INDEMNIFICATION**

### **(a) Acts or Omissions**

**Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or**

performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**(b) Infringements**

- (i) Contractor shall indemnify and hold harmless the State of Texas, CPA, and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- (ii) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by Contractor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- (iii) If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**(c) Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- (i) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, CPA, AND/OR THE CUSTOMER SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR

**THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.**

- (ii) **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, CPA, CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

### **32. ADDITIONAL CONTRACTOR CERTIFICATIONS**

- (a) **Gifts to a public servant.** Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or the Master Agreement.
- (b) **Antitrust.** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business during the procurement process. Contractor hereby assigns to the State of Texas all of Contractor's rights, title and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.
- (c) **Deceptive Trade Practices; Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Chapter 17 of the Texas Business and Commerce Code or allegations of any unfair business practice in any administrative hearing or court suit. Contractor represents and warrants that it has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and further certifies that such officers have not been found to be liable for any such practices in such proceedings.
- (d) **Suspension and Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities

ineligible for federal procurement are listed at <https://www.sam.gov>.

- (e) **Child Support Obligations.** Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to Section 231.006 of the Texas Government Code, must provide names and Social Security numbers of each person with at least 25% ownership of the Contractor's business entity. This information must be provided to CPA in writing signed by Contractor's duly authorized representative prior to execution of this Contract. By submission of this Contract signed by Contractor without submission of required identity disclosures pursuant to § 231.006(d), Texas Family Code, constitutes a certification by Contractor that no individual or sole proprietor or partner, shareholder, or owner has an ownership interest of at least 25% of the business entity identified as Contractor.
- (f) **Ineligibility due to preparation of specifications.** Pursuant to Section 2155.004(a) of the Texas Government Code, Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under Section 2155.004 of Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated, payment withheld, or both if this certification is inaccurate.
- (g) **Debts and delinquent taxes.** CPA is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, CPA will apply any payments or other amounts Contractor is otherwise owed under this Contract or related to any order resulting from this Contract toward any debt Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor shall comply with all applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (h) **Contracting with executive head of a state agency.** In accordance with Texas Government Code §669.003 (relating to contracting with executive head of a state agency), by signature hereon, Contractor certifies that it (1) is not the executive head of CPA; (2) was not at any time during the past four years the executive head of CPA; and (3) does not employ a current or former executive head of a state agency. Contractor acknowledges that this Contract may be terminated at any time, and payments withheld, if this information is false.
- (i) **Buy Texas.** To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- (j) **Conflicts of interest.** Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into this Contract will not reasonably create an appearance of impropriety.
- (k) **Receipt of appropriated funds not prohibited.** Contractor certifies that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.

- (l) **Disaster Relief Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) **Fixed prices for term.** Contractor hereby certifies that all prices under the Master Agreement are current prices and that such prices are guaranteed to remain current with any approved Master Agreement pricing changes for the entire term of this Contract. In the event of a decrease in prices offered under the Master Agreement, Contractor agrees to notify CPA within thirty (30) working days of such decrease and offer such pricing to the State of Texas, CPA, and Customers. If Contractor fails to notify CPA of such decrease in pricing as specified herein, CPA shall have the right to cancel this Contract and Contractor shall issue a refund for items procured under this Contract. Such refund shall be equal to the difference between the prices offered under the Master Agreement submitted as a basis for this Contract and the lower price.
- (n) **Competitively awarded contract.** Contractor hereby certifies that the Master Agreement was previously awarded using a competitive process by the federal government or another governmental entity in accordance with Section 2155.502 of the Texas Government Code and all other applicable laws, rules, and regulations.
- (o) **Franchise tax requirements.** Contractor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code. If Contractor is a qualifying business entity type per CPA guidelines and is not set up in the Texas Franchise Tax system, Contractor must do so prior to contracting with the State of Texas.
- (p) **Certifications apply to Customer purchase orders.** Contractor agrees that all affirmations and certifications in this Contract apply to and are for the benefit of Customers. Furthermore, Contractor agrees that by accepting an order under this Contract, Contractor certifies to the Customer that the all affirmations and certifications are true and correct.

If any Contractor certification in this Contract or the Master Agreement is untrue, CPA shall have the right to cancel this Contract in its entirety.

- (q) In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

### **33. NO DEBT AGAINST THE STATE**

This Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

### **34. COMPLIANCE WITH APPLICABLE LAWS AND OTHER REQUIREMENTS**

Contractor must comply with all laws, regulations, requirements, and guidelines applicable to a Contractor providing goods and services to the State of Texas as these laws, regulations, requirements, and guidelines currently exist and as they are amended throughout the term of this Contract.



### **35. COOPERATION**

Contractor must ensure that it cooperates with CPA and other local, state, or federal administrative agencies, at no charge to the State of Texas, CPA, or Customers for purposes relating to the administration of this Contract. Contractor agrees to reasonably cooperate with and work with CPA's contractors, subcontractors, and third party representatives as requested by CPA.

### **36. ASSIGNMENT AND OTHER ORGANIZATIONAL CHANGES**

Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from CPA.

Contractor must provide CPA with written notification of all name changes and organizational changes relating to Contractor no later than ten (10) business days of such change. Contractor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name (if applicable), provide the new Tax Identification Number (if applicable), and describe how the change will impact its ability to perform this Contract. If the change entails personnel changes for personnel performing the responsibilities of this Contract for Contractor, Contractor shall identify the new personnel. CPA may request other information about the change and its impact on this Contract and Contractor shall supply the requested information within five (5) working days of receipt of CPA's request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor, to maintain its status as a party to this Contract.

CPA may terminate this Contract due to any change to Contractor that materially alters Contractor's ability to perform under this Contract. The CPA has the sole discretion to determine if termination is appropriate. CPA may also, in its sole discretion, terminate this Contract for failure to provide notice or documentation or obtain approval as required in this Contract.

### **37. PUBLICITY**

News releases pertaining to this Contract and advertisements, publications, declarations and any other pronouncements by Contractor using any means or media mentioning the State of Texas or CPA or a Customer must be approved in writing by the State of Texas, CPA, or the Customer, as applicable, prior to public dissemination. Contractor may not send out unsolicited electronic mail or facsimile transmissions to CPA or Customers without prior written approval of CPA, regardless of whether the proposed communication specifically references this Contract.

### **38. NOTICES**

Each party must send any written notices required under this Contract to the party at the respective address indicated below:

- (a) The address for Contractor will be the address specified on Page 1 of this Contract.
- (b) The address for CPA will be as follows:

*by Overnight/Express Mail:*  
Texas Comptroller of Public Accounts  
Statewide Procurement Division  
Attn: Contract Management

1711 San Jacinto Blvd.  
Room 174-A (CPA mailroom, N.E. Back Door)  
Austin, TX 78701

*for U.S. mail:*

Texas Comptroller of Public Accounts  
Statewide Procurement Division  
Attn: Contract Management  
P.O. Box 13186  
Austin, TX 78711-3186

Notices will be by U.S. Mail, addressed to the appropriate foregoing address. Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

### **39. DISPUTE RESOLUTION**

Disputes under this Contract and, by virtue of this Contract, the Master Agreement, are subject to Chapter 2260 of the Texas Government Code (Chapter 2260) as set forth below. Set forth below are terms and conditions for dispute resolution relating to claims involving Contractor and CPA. Except as otherwise provided by law or applicable rules, the same terms and conditions in this section shall apply to claims involving Contractor and any other Customer subject to Chapter 2260, substituting such other Customer for "CPA" when referenced below in this section.

The dispute resolution process provided for in Chapter 2260 and applicable CPA rules shall be used by CPA and Contractor to resolve any dispute arising under this Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by Contractor under this Contract. If Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in this Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by the CPA nor any other conduct of any representative of the CPA relating to this Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Contract, the CPA and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the CPA and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the CPA, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the CPA and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and Contractor shall, in good faith, utilize mediation or another non-

binding dispute resolution process before pursuing litigation. The CPA's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's termination rights; or (3) other termination provisions or expiration dates of this Contract.

Notwithstanding any other provision to the contrary, unless otherwise requested or approved in writing by the CPA, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **40. AMENDMENT**

- (a) This Contract may be amended only upon written agreement between CPA and Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) Customers (other than CPA as set forth in this Contract) shall not have the authority to modify the terms of this Contract; however, additional Customer terms and conditions that do not conflict with this Contract and are acceptable to Contractor may be added in a Purchase Order and given effect. No term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of this Contract, regardless of whether such term or condition is acceptable to Contractor. In the event of a conflict between a Customer's Purchase Order and this Contract, this Contract shall control.
- (c) Comptroller reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for compliance with all applicable state and federal laws, regulations, requirements, and guidelines.

#### **41. NO WAIVER**

No provision of this Contract or the Master Agreement is in any way intended to constitute a waiver by the CPA or the State of Texas or any Customer of any immunities from suit or from liability of the CPA or the State of Texas or any Customer.

Nothing in this Contract or the Master Agreement shall be construed as a waiver of the sovereign immunity of the State of Texas, CPA, or Customers. Neither this Contract nor the Master Agreement shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, CPA, or Customers under this Contract or the Master Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. CPA does not waive any privileges, rights, defenses, or immunities available to CPA by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

#### **42. HEADINGS**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

#### **43. ORDER OF PRIORITY**

If there is any inconsistency or conflict between this document and the Master Agreement or any provision of any document incorporated by reference, this document will prevail.

#### **44. ENTIRE AGREEMENT**

This Contract consists of these terms and conditions, together with (a) the Master Agreement (see Paragraph entitled "CONTRACT DOCUMENTATION"), (b) the NASPO ValuePoint Participating Addendum attached hereto and labeled Attachment A; (c) the Neopost Lease, Rental, and Maintenance terms and conditions attached hereto and labeled Attachment B, and, if applicable, Contractor's dealer Letter(s) of Authorization and dealer Letter(s) of Acceptance, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing and signed by CPA.

#### **45. GOVERNING LAW, VENUE**

This Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Contractor agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the CPA under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

#### **46. SEVERABILITY**

In the event that any term, provision, covenant, or condition of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

*[remainder of page intentionally left blank]*

## SIGNATORIES

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective counterparts. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

### Texas Comptroller of Public Accounts

By: \_\_\_\_\_

Mike Reissig, Deputy Comptroller

Date: \_\_\_\_\_

9.8.17

### Contractor

By: \_\_\_\_\_

Name: Kevin O'Connor

Title: VP Marketing

Date: 9/6/17

## Attachment A

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Master Agreement #: ADSP016-169901

Contractor: **NEOPOST**

Participating Entity: **STATE OF TEXAS**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*
  - Postage Meter Rental*
  - Mailing Systems-Ultra Low, Low, Medium, High, Production Volume*
  - Integrated Postal Scales*
  - Letter Openers-Low, High Volume*
  - Letter Folders-Low, High Volume*
  - Folder-Inserters-Low, Medium, High, Production Volume*
  - Envelope Addressing System-Low, Medium, High, Production Volume*
  - Tabbers-Low, Medium, High Volume*
  - Extractors*
  - Mail Furniture*
  - Software License & Subscription*

The State of Texas reserves the right to select suitable items to provide its customers.

### **Master Agreement Terms and Conditions:**

1. Scope: This addendum covers the *Mailroom Equipment, Supplies & Maintenance* led by the State of **Arizona** for use by state agencies and other entities located in Texas authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of **Texas**. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

## Attachment A

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### Contractor

Name:	John Marin
Address:	Neopost USA, Inc. 478 Wheelers Farms Rd. Milford, CT 06461
Telephone:	512-697-2493
Fax:	512-287-3941
Email:	j.marin@neopost.com

### Participating Entity

Name:	Texas Comptroller of Public Accounts
Address:	PO Box 13186 Austin, TX 78711
Telephone:	512-463-3894
Fax:	
Email:	Jason.ochoa@cpa.texas.gov

## **4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

- a. Software subscription terms and Software license terms and conditions shall be negotiated and agreed on a case-by-case basis between the Contractor and customer.
- b. This agreement may last up to five years as described in Section 22 of Texas Cooperative Contract Participation Agreement 985L1-1970. If the Master Agreement is extended beyond five years, CPA will have discretion whether to extend this participating addendum. CPA must give advance written notice to the Contractor of any extension.


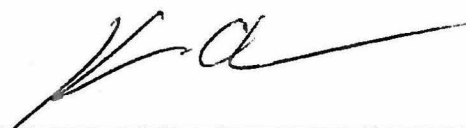
5. Lease Agreements: Participating Entities may lease equipment under this Participating Addendum in accordance with the terms and conditions titled "TEXAS COOPERATIVE CONTRACT PA 985L1-1970 NASPO MASTER AGREEMENT ADSPO16-169901 GOVERNMENT PRODUCT LEASE AGREEMENT," fully incorporated herein, and attached hereto as Attachment B. The termination or expiration of this Agreement (PA) shall in no way relieve any individual entity from its obligations to any product leases or postage meter rental agreements that were entered prior to the date of any such termination.
6. Subcontractors: All contractors, dealers, and resellers authorized in the State of Texas as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
8. All purchase orders issued by purchasing entities within the jurisdiction of this Addendum must include the State of Texas Contract Number 985L1-1970.



**Attachment A**

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: Texas Comptroller of Public Accounts	Contractor: Neopost USA Inc.
Signature: 	Signature: 
Name: Mike Reissig	Name: Kevin O'Connor
Title: Deputy Comptroller	Title: VP Marketing
Date: 9.8.17	Date: 9/6/17

**TEXAS COOPERATIVE CONTRACT PA  
985L1-1970 NASPO MASTER AGREEMENT  
ADSP016-169901 GOVERNMENT PRODUCT LEASE  
AGREEMENT**

In this Government Product Lease Agreement (the "Lease"), the words "You" and "Your" mean the lessee, which is the entity that is identified as the Customer on the Government Product Lease Agreement Order Form ("Order Form"). "We," "Us" and "Our" mean the lessor, MailFinance Inc. "Supplier" refers to either Neopost USA Inc., or any other third party that has manufactured, or is providing services related to, the Products.

**1. Lease of Products. THIS LEASE IS UNCONDITIONAL AND NON-CANCELABLE** (except as provided in Section 24, below) during the Initial Term (as defined below). You agree to lease from Us the equipment, embedded software, Software, services and other products listed on the Order Form, together with all existing accessories, embedded software programs, attachments, replacements, updates, additions and repairs, (collectively the "Products") upon the terms stated herein. For the avoidance of doubt, postage meters for use in mailing machines are excluded from the definition of Products. The term "Software" means any software that is subject to this Lease, other than software programs that are embedded in the hardware. Software is subject to the additional terms as may be provided by the Supplier.

**2. Promise to Pay.** You promise to pay to Us the lease payment shown on the Order Form ("Lease Payment") in accordance with the payment schedule set forth thereon, plus all other amounts stated in this Lease.

**3. Initial Term; Renewal.**

**3.1** The Initial Term of this Lease will begin on the date the Products are installed and will continue for the number of months shown on the applicable Order Form ("Initial Term"). You must notify Us in writing at least thirty (30) days before the end of the Initial Term that You intend to either: (i) return the Products at the end of the Initial Term; or (ii) purchase the Products pursuant to Section 22. If You have not opted for an LTOP lease and You fail to give us such notice, then this Lease will automatically renew for consecutive periods of one (1) month each (each a "Renewal Period"). The amount You pay for the Products will remain unchanged during each Renewal Period. We will not notify You that the Initial Term or any Renewal Period is ending. You may terminate this Lease at the conclusion of any Renewal Period by giving Us thirty (30) days prior written notice of Your intent to do so. If You notify Us in writing that You intend to terminate the Lease, as set forth above, You shall either return the Products pursuant to Section 12 of this Lease or purchase the products pursuant to Section 22.

**4. Payments.** Lease Payments, and other charges provided for herein, are payable in arrears periodically as stated on the Order Form. You agree to make Lease Payments to Us at the address specified on Our invoices, or at any other place designated by Us within thirty (30) days of the date of Our invoice.

**5. Delivery and Location of Products.** The Products will be delivered to You at the installation address specified on the Order Form ("Installation Address") or, if no such location is specified, to Your billing address. Your acceptance of the Products occurs upon delivery of the Products. You shall not remove the Products from the Installation Address unless You first get Our written permission to do so.

**6. Ownership, Use, and Maintenance of Products.** We will own and have title to the Products during the Lease. You agree that the Products are and shall remain Our personal property. You authorize Us to record (and amend, if

appropriate) a UCC financing statement to protect Our interests. You represent that the Products will be used solely for commercial purposes and not for personal, family or household purposes. At Your own cost, You agree to maintain the Products in accordance with the applicable operation manuals and to keep the Products in good working order, ordinary wear and tear excepted. (Note that TxSmartBuy pricing for all NeoPost equipment leases includes the cost of the Maintenance Agreement as described below.)

**7. Assignment of Supplier's Warranties.** We hereby assign to You any warranties relating to the Products that We may have received from the Supplier.

**8. Relationship of the Parties.** You agree that You, not We, selected the Products and the Supplier, and that We are a separate company from the Supplier and that the Supplier is not Our agent. IF YOU ARE A PARTY TO ANY POSTAGE METER RENTAL, MAINTENANCE, SERVICE, SUPPLIES OR OTHER CONTRACT WITH ANY SUPPLIER, WE ARE NOT A PARTY THERETO, AND SUCH CONTRACT IS NOT PART OF THIS LEASE (EVEN THOUGH WE MAY, AS A CONVENIENCE TO YOU AND THE SUPPLIER, BILL AND COLLECT MONIES OWED BY YOU TO THEM).

**9. Default.** You will be in default under this Lease if You fail to pay any amount within ten (10) days of the due date or fail to perform or observe any other obligation in this Lease. If You default, We may, without notice to You, do any one or more of the following, at Our option, concurrently or separately: (A) cancel this Lease; (B) require You to return the Products pursuant to Section 12 below; (C) take possession of and/or render the Products unusable, and for such purposes You hereby authorize Us and Our designees to enter Your premises, with prior reasonable notice or other process of law; and (D) require You to pay to Us, on demand as liquidated damages and not as a penalty, an amount equal to the sum of: (i) all Lease Payments and other amounts then due and past due; (ii) all remaining Lease Payments for the then-current term, together with any taxes due or to become due during such term (which You agree is a reasonable estimate of Our damages); and (iii) in the event that You failed to promptly return the Products to Us, an amount equal to the remaining value of the Products at the end of the then-current term, as reasonably determined by Us. We are not required to re-lease or sell the Products if We repossess them. These remedies shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to Us.

**10. Finance Lease.** You agree that this Lease is a "finance lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). To the extent permitted by law, You hereby waive any and all rights and remedies conferred upon You under UCC Sections 2A-303 and 2A-508 through 2A-522, or any similar laws.

**11. Loss; Damage.** You shall bear the risk of loss and damage to the Product(s) during the Initial Term and any Renewal Period.

**12. Return of Products.** Unless You take title to the tangible Products pursuant to Section 22 or Section 23, then You are required to return such Products under this Lease. In such a case, at the end of the Lease, You shall, after receiving an Equipment Return Authorization ("ERA") number from Us, promptly send the Products, at Your expense plus shipping and handling costs, to any location(s) that We designate in the contiguous United States. The Products must be properly packed for shipment with the ERA number clearly visible, freight prepaid and fully insured, and must be received in good condition, less normal wear and tear.

**13. Assignment. YOU SHALL NOT SELL, TRANSFER, ASSIGN, SUBLEASE, PLEDGE OR OTHERWISE ENCUMBER (COLLECTIVELY, "TRANSFER") THE PRODUCTS OR THIS LEASE IN WHOLE OR IN PART.**

**14. Disclaimer of Warranties.** WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE SUITABILITY OF THE PRODUCT(S), ITS CONDITION, ITS MERCHANTABILITY, ITS FITNESS FOR A PARTICULAR PURPOSE, ITS FREEDOM FROM INFRINGEMENT, OR OTHERWISE. WE PROVIDE THE PRODUCTS TO YOU "AS IS," "WHERE IS" AND "WITH ALL FAULTS."

**15. Limitation of Liability.** WE SHALL NOT BE LIABLE TO YOU AND YOU SHALL NOT MAKE A CLAIM AGAINST US FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE OF ANY KIND ARISING DIRECTLY OR INDIRECTLY FROM THE DELIVERY, INSTALLATION, USE, RETURN, LOSS OF USE, DEFECT, MALFUNCTION, OR ANY OTHER MATTER RELATING TO THE PRODUCTS (COLLECTIVELY, "PRODUCT MATTERS"). NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE, EXCEPT FOR DIRECT DAMAGES RESULTING FROM PERSONAL INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY OUR NEGLIGENCE OR INTENTIONAL CONDUCT, THE MAXIMUM AMOUNT OF OUR LIABILITY TO YOU FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO US HEREUNDER BY YOU.

**16. Notice.** All notices related to this Lease to Us shall be made by You, or an attorney representing You. Notice of non-renewal of this Lease shall be made as outlined in Section 3 herein by calling 1-800-NEOPOST (636-7678). All other notices, requests and other communications hereunder shall be in writing and sent to: MailFinance Inc., 478 Wheelers Farms Road, Milford, CT 06461 ("Notice Address"). Such notices shall be considered given when: (i) delivered personally, or (ii) sent by commercial overnight courier with written confirmation of delivery. In the event that We do not accept Your offer to enter this Lease, then You have the right to a written statement that specifies the reasons that Your offer was not accepted. You can request such a statement by writing to Us at the Notice Address.

**17. Integration.** The Lease represents the final

and only agreement between You and Us. There are no unwritten oral agreements between You and Us. The Lease can be changed only by a written agreement between You and Us. The Lease incorporates and is subordinate to (i) NASPO Master Agreement ADSP016-169901, (ii) Texas Cooperative Contract Participation Agreement No. \_\_\_\_\_, and (iii) the State of Texas Participating Addendum for NASPO Master Agreement ADSP016-169901.

**18. Severability.** In the event any provision of this Lease shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

**19. Waiver or Delay.** A waiver of any default hereunder or of any term or condition of this Lease shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition, but shall apply solely to the instance to which such waiver is directed. We may accept late payments, partial payments, checks, or money orders marked "payment in full," or with a similar notation, without compromising any rights under this Lease.

**20. Survival of Obligations.** Both your and Our obligations under this Lease shall survive any expiration or termination of any government procurement contract that may be related to it. Any obligations and duties which by their nature extend beyond the expiration or termination of this Lease shall survive the expiration or termination of this Lease.

**21. Choice of Law; Venue; and Attorney's Fees.** This Lease shall be governed under the laws of the State of Texas, without regard to conflicts of law, and jurisdiction shall lie exclusively in a court of competent jurisdiction in Travis County, Texas.

**22. FMV Leases.** This Lease is a fair market value lease. Unless You are in default, You may elect to purchase the hardware Products at the end of this Lease on an "as is, where is" basis for their fair market value, as reasonably determined by Us. In the event that You elect to do so, You must give us sixty (60) days prior written notice of Your election to purchase such Products.

**23. RESERVED.**

**24. Termination.**

**24.1 Non-Appropriation.**

**a.** You warrant and represent that You intend to enter into this Lease for at least the entire Initial Term and that You are doing so for an essential government purpose. You agree that, prior to the expiration of the Initial Term, you shall not terminate this Lease in order to obtain the same or similar Products from another vendor.

**b.** You may terminate this Lease at the end of Your current fiscal year, or at the end of any subsequent fiscal year, if appropriated funds are not available to You for the Lease Payments that will be due in the next fiscal year. In the event of such a non-appropriation, then You shall provide written notice to Us that states:

Sufficient funds have not been and will not be appropriated for the remaining payments due under the Lease. I confirm that we will not replace the Products with similar equipment from any other party in the succeeding fiscal year.

**24.2 Convenience.** You may terminate this Lease at anytime and for any reason or for no reason ("Termination for Convenience"); provided that You comply with the provisions of this paragraph. In the event of a Termination for Convenience, You shall pay Us a termination charge equal to the net present value of the periodic payments remaining in the Initial Term or, if applicable, the then-current Renewal Term, discounted to the present value at an interest rate equal to six percent (6%) per annum. Such amount must be received by Us within thirty (30) days of the effective date of the termination.

**25. Additional Postage Meter Terms.** If the Products require a postage meter, then You agree that Neopost USA's Postage Meter Rental Agreement shall govern your rental of such postage meter.

## **POSTAGE METER RENTAL AGREEMENT**

**1. Incorporation of Certain Terms.** Customer acknowledges that: (i) it has entered a Government Product Lease Agreement with MailFinance Inc. (the "Lease"); and (ii) if the Products that are subject to the Lease includes a mailing machine, then the terms of this Postage Meter Rental Agreement ("Rental Agreement") shall govern its rental of the Postage Meter (as defined below) for such machine. Any defined terms in the Lease shall have the same meanings in this Rental Agreement, except that "We," "Us," and "Our," refers to Neopost USA Inc., and any reference to "Products" shall refer to the Postage Meter. Sections 11, 12 and 14 through 25 of the Lease are hereby incorporated into this Rental Agreement, except that any reference in those sections to the "Lease" refer to this Rental Agreement.

**2. Provisions as to Use.** You acknowledge that: (i) as required by United States Postal Service ("USPS") regulations, the postage meter(s) identified on the Order Form (the "Postage Meter") is being rented to You and that it is Our property; (ii) the Postage Meter will be surrendered by You upon demand by Us; (iii) You are responsible for the control and use of the Postage Meter; (iv) You will comply with all applicable laws regarding Your use or possession of the Postage Meter; (v) the use of the Postage Meter is subject to the conditions established from time to time by the United States Postal Service; and (vi) the Postage Meter is to be used only for generating an indicia to evidence the prepayment of postage and to account for postal funds. It is a violation of Federal law to misuse or tamper with the Postage Meter and, if You do so, We may terminate this Rental Agreement upon notice to You.

**3. Rental Fee, Term, and Taxes.** The rental fee for the Postage Meter rental during the Initial Term is included in the Lease Payment. For each Renewal Term, You agree to pay Our then-current fee for the Postage Meter rental. The Postage Meter rental fee does not include the cost of consumable supplies. The term of the rental shall be equal to the term of the Lease and is NON-CANCELABLE. You agree to pay all

applicable taxes related to Your acquisition, possession, and/or use of the Postage Meter including all property taxes on the Postage Meter. Furthermore, You agree to pay the applicable fee to cover Our expenses associated with the administration, billing and tracking of such charges and taxes. Notwithstanding the foregoing, in the event You are tax exempt, upon providing Us a certificate, You will not be required to pay any taxes covered by such forth in Section 12 of the Lease. Furthermore, You agree that if you fail to return a postage meter within thirty (30) days of receipt of the Equipment Return Authorization from Us, then You will pay a postage meter replacement fee of one thousand dollars (\$1,000).

**4. Postage Meter Maintenance, Inspections, and Location.** We will keep the Postage Meter in good working condition during the term of this Rental Agreement. The United States Postal Service regulations may require Us to periodically inspect the Postage Meter. You agree to cooperate with Us regarding such inspections. We may, from time to time, access and download information from Your Postage Meter to provide Us with information about Your postage usage and We may share that information with Our distributors and other third parties and You hereby authorize Us to do so. You agree to promptly update Us whenever there is any change in Your name, address, telephone number, the licensing post office, or the location of the Postage Meter.

**5. Postage Advances.** We do not sell postage. In the event You require an emergency advance for postage, We, at Our sole discretion, may advance You money to reset the Postage Meter. If We do provide such an advance, You agree to repay Us within five (5) days from the time of such advance: (i) the amount of the emergency advance; and (ii) the then-current advance fee.

**6. Default.** In the event You fail to perform in accordance with the terms set forth in this Rental Agreement, or any other Agreement with Us or any of Our affiliates, including, but not limited to, MailFinance Inc., and Mailroom Finance, Inc., then We may, without notice: (i) repossess the Postage Meter(s); (ii) disable the Postage Meter; (iii) immediately terminate this Rental Agreement; and (iv) pursue any remedies available to Us at law or in equity. Furthermore, upon the return of the Postage Meter, You hereby authorize Us to offset any amount of postage remaining in the Postage Meter, prior to any refund to You, against any amount due to Us or any of Our affiliates. To the extent allowable by law, You shall also pay all of Our costs in enforcing Our rights under this Rental Agreement, including reasonable attorneys' fees and expenses that We incur to take possession, store, or repair, the Postage Meter, as well as any other expenses that We may incur to collect amounts owed to Us. These remedies shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to Us.

### **7. Rate Updates.**

A. Maintenance of Postal Rates. It is Your sole responsibility to ensure that correct amounts are applied as payment for mailing and shipping services. We shall not be responsible for returns for delivery delays, refusals, or any other problems caused by applying the incorrect rate to mail or packages.

- B. Rate Updates with Online Services. If the Order Form indicates that You are enrolled in Our Online Services program, then We will make available periodic updates for Your covered Products and/or Postage Meter, including updates to maintain accurate USPS rates for the USPS services that are compatible with such Products or Postage Meter. **The rate updates that are offered with Our Online Services program are only available for products that are Integrated (as defined below) into Your mailing machine.** For the purposes of this section, "Integrated" means that the covered hardware cannot properly operate on a stand-alone basis and it has been incorporated into the mail machine. Products that are not Integrated including, but not limited to, all Software and scales with "ST-77," or "SE" in the model number will not receive updated rates as part of Our Online Services program (collectively "Excluded Products").
- C. Rate Updates with Rate Change Protection and Software Advantage. If You have any of Our Excluded Products, You may have elected to purchase Rate Change Protection ("RCP") from Us for Your hardware products or Software Advantage for Your Software. If the Order Form indicates that You have selected RCP or Software Advantage, We will make available the following updates for Your covered Products or Software: (i) updates to maintain accurate rates for the services offered by the USPS and other couriers that are compatible with Your covered Products or Software; and (ii) updates for major zip or zone changes that are compatible with Your covered Products or Software. If any reprogramming is required because You have moved the Products or Postage Meter to a new location, none of the services described in this Section cover the cost to do so. If You have not selected RCP or Software Advantage, You agree that We may send You periodic rate updates as needed and You agree to either: (i) promptly pay the then-current price for such update; or (ii) return the unused, update to Us within ten (10) business days of receiving it. Customers with an outstanding Accounts Receivable balance may not receive a rate update until the open balance is resolved.

**8. United States Postal Service acknowledgement of deposit requirement.** By signing this Postage Meter Rental Agreement, You acknowledge and agree that You have read the United States Postal Service Acknowledgement of Deposit (the "Acknowledgement") and will comply with its terms and conditions, as it may be amended from time to time.

**9. Additional United States Postal Service terms.**

- A. By signing this Postage Meter Rental Agreement, You acknowledge that You are also entering into an Agreement with the United States Postal Service ("USPS") in accordance with the Domestic Mail Manual ("DMM") 604.4, Postage Payment Methods, Postage Meters and PC Postage Products

(collectively, "Postage Evidencing Systems" or "PES") and accept responsibility for control and use of the PES contained therein.

- B. You also acknowledge You have read the DMM 604.4, Postage Payment Methods, Postage Meters and PC Postage Products (Postage Evidencing Systems) and agree to abide by all rules and regulations governing its use.
- C. Failure to comply with the rules and regulations contained in the DMM or use of the PES in any fraudulent or unlawful scheme or enterprise may result in the revocation of this Rental Agreement.
- D. You further acknowledge that any use of this PES that fraudulently deprives the USPS of revenue can cause You to be subject to civil and criminal penalties applicable to fraud and/or false claims against the United States. The submission of a false, fictitious or fraudulent statement can result in imprisonment of up to five (5) years and fines of up to \$10,000 (18 U.S.C. 1001). In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed (3 U.S.C. 3802).
- E. You further understand that the rules and regulations regarding use of this PES as documented in the USPS Domestic Mail Manual may be updated from time to time by the USPS and it is Your obligation to comply with any current or future rules and regulations regarding its use.
- F. You are responsible for immediately reporting (within seventy-two hours or less) the theft or loss of the postage meter that is subject to this Rental Agreement. Failure to comply with this notification provision in a timely manner may result in the denial of refund of funds remaining on the postage meter at the time of the loss or theft.

## **MAINTENANCE AGREEMENT**

**1. Incorporation of Certain Terms.** You acknowledge that You have entered a Government Product Lease Agreement with MailFinance Inc. (the "Lease"). Any defined terms in the Lease shall have the same meanings in this Maintenance Agreement, except that "We," "Us," and "Our," refer to Neopost USA Inc. Sections 13 through 24 of the Lease are hereby incorporated into this Maintenance Agreement, except that any reference in those sections to the "Lease" refers to this Maintenance Agreement.

**2. Neopost's Terms and Conditions for Maintenance Services.** If the Order Form indicates that You have purchased maintenance services, then Neopost USA Inc., or one of its affiliates, will provide maintenance services for the Products in accordance with Neopost USA Inc.'s then-current maintenance terms and pricing for the level of maintenance services that You have purchased. Those services will be provided for the entire term of the Lease and are NON- CANCELABLE. The current version of those terms and conditions are available at

[www.neopostusa.com/maintenanceagreementV061](http://www.neopostusa.com/maintenanceagreementV061)

3. You agree that You have access to such terms and that they are incorporated into this Maintenance Agreement by this reference, and that You shall be bound by such terms as if they were fully stated herein. **Notwithstanding the foregoing, maintenance services are not available on HD Office Printer Series products.**

**3. Auto Ink Program.** If the Order Form indicates that You have elected to participate in Our Auto Ink

Program (the "Program"), then you hereby authorize Us to ship You a new ink cartridge for the Product whenever the Product indicates that the then-current ink cartridge reaches twenty percent (20%) of its capacity. You authorize Us to charge the then-current fee for such cartridge (plus applicable taxes and shipping charges) to Your NeoFunds or TotalFunds Account. You may opt out of the Program at any time by sending an email to [CIMneworders@neopost.com](mailto:CIMneworders@neopost.com).



**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 21st day of June, 2019

CONTRACTOR  
Authorized  
Signature

Title

Neopost USA Inc.

Secretary




**City of Austin, Texas**  
**Section 0805**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: Miner, Ltd.

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Signature of Officer or  
Authorized  
Representative:  Date: July 12, 2019

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Printed Name: Jason Morris

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Title: Vice President

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**City of Austin, Texas**  
**NONRESIDENT BIDDER PROVISIONS**  
**SOLICITATION NO.**

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

Answer: Nonresident Bidder

- (1) Texas Resident Bidder – A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- (2) Nonresident Bidder – A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state.

Answer: No Which State: \_\_\_\_\_

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: \_\_\_\_\_

Bidder's Name: Neopost USA Inc.

Signature of Officer or  
Authorized  
Representative:



Date: 7/12/2019

Printed Name: Kevin O'Connor

Title: VP US Marketing